

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6896 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil
Judge? No

PROJECT MANAGER-ONGC

Versus

SODAGARSINGH

Appearance:

MS KALPANA BRAHMBHATT for Petitioners

None present for the Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/12/97

ORAL JUDGEMENT

The Challenge is made by the petitioner in this
Spl.C.A. to the order at Annexure-C dated 17th August,
1985 passed in Misc. Civil Appeal No. 41 of 1985 by the
District Judge, Bharuch, under which the temporary
injunction has been granted in favour of the respondent.
The respondent was ordered to be retired from the

services of the Corporation on 31st March, 1985 since he had reached to the age of superannuation. He filed the Regular Civil Suit No. 82 of 1985 in the Court of Civil Judge (J.D.), Ankleshwar, challenging the notice of retirement and he disputed his date of birth shown in the service book. In the service book, the date of birth of the respondent is recorded as 20.3.1927 whereas he claimed his date of birth to be 20th May, 1936. The learned trial court had declined to grant any interim relief in favour of the respondent on his application below Exhibit 5. Against the order of the trial court, the respondent preferred Misc. Civil Appeal No. 41 of 1985 in the District Court at Bharuch and also prayed for interim relief therein. The appellate court has granted the injunction in favour of the respondent and the petitioner has been restrained from retiring the respondent till the final disposal of the suit.

2. Though the injunction which has been granted in the matter of dispute of date of birth of an employee/officer is without jurisdiction in view of the latest decision of the Hon'ble Supreme Court, but otherwise also by now the respondent would have reached to the age of superannuation even on the basis of what he claims to be his date of birth and further that the petitioner has unable to state what has ultimately happened in the civil suit, nothing now substantially survives in this petition. In view of the decision of the Hon'ble Supreme Court in the cases of SWETAMBAR STHANAKWASI JAIN SAMITI vs. THE ALLEGED COMMITTEE OF MANAGEMENT SRI R.J.I. COLLEGE, AGRA, reported in JT 1997 (3) SC 21 and DURGA PRASAD vs. NAVEEN CHANDRA, reported in 96 (3) SC 564, this petition also otherwise not maintainable. The Apex Court in those cases has held that this High Court should not permit its extraordinary jurisdiction under Articles 226 or 227 of the Constitution to be converted into civil court under an ordinary law. When pending the civil suit between the parties, the interim or miscellaneous orders passed by the trial court cannot be challenged by way of writ petition before this Court as against those orders, adequate remedy is provided in Civil Procedure Code, 1908.

3. In the result, this Special Civil Application is dismissed. Rule is discharged. Interim relief, if any granted earlier stands vacated. However, vacation of interim relief will not give any right to the respondent to claim the wages and retirement benefits on the basis of what he claimed his date of birth to be, if already are not given to him. The respondent shall be abided by

the decision given in the Civil Suit filed by him and in case he fails in the suit whatever benefits he received by working in the ONGC beyond date of retirement shall berecoverable from him with reasonable rate of interest say 12%p.a. from due date.

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